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No. 267.
Brf. of Critcher for Appellant.

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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1899.

THE CORRALITOS COMPANY,
Appellant,
vs.
THE UNITED STATES and the
APACHE INDIANS.
No. 267.

BRIEF FOR APPELLANT.

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Supreme Court of the United States.

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BRIEF OF JOHN CRITCHER, COUNSEL FOR APPELLANTS.

The petition avers that the plaintiff is a company, chartered under the laws of the State of New York, doing business in the State of Chihuahua, Republic of Mexico; that the petition is filed under an Act of Congress entitled "An Act to provide for the adjudication and payment of claims arising from Indian depredations, approved March 3d, 1891;" that in 1881 and 1882, when these depredations were committed, your petitioners were citizens of the United States; that they were the owners of cattle, horses, mules, sheep and so forth, of the value of $74,710.00; that this property was stolen and carried off by Indians from New Mexico and Arizona, and taken from Mexico into the United States.

To this petition defendants plead in bar, "because the depredation complained of is alleged to have occurred in the Republic of Mexico beyond the jurisdiction of the United States, and courts thereof, and that this court has

not jurisdiction to entertain this suit." To this plea the plaintiff demurred. The Court of Claims overruled the demurrer, sustained the plea in bar, and dismissed the petition.

There is but one question before the court. Can the plaintiffs under the Act of Congress of March 3, 1891, recover the value of their property taken in Mexico by Indians from New Mexico and Arizona, and thence taken by the said Indians into the United States?

The jurisdiction of the Court of Claims is conferred by Act of March 3, 1891. It gives the court jurisdiction of "*all* claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe, or nation in amity with the United States, without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for." The court has jurisdiction of all claims that fulfill these conditions. The jurisdiction is plenary. The remedy is evidently intended to be co-extensive with the wrong. There is nothing restrictive as to the place where the injury happens to be received, nor any word in the act that exempts these claims from the operation of general legal principles.

This is a suit for the value of property taken or destroyed. (See 3d clause of section 5.) It is not an offense we are dealing with, nor a crime that we are seeking to punish. It is neither a criminal proceeding nor a local action; but a suit for the value of property that was taken or destroyed, in a court expressly clothed with jurisdiction to inquire into and finally adjudicate such matters.

In such cases, we hold, no matter where the cause of action arises, the claim may be enforced by the court having jurisdiction of the parties and of the subject-mat-

ter. It was not therefore necessary to give the Court of Claims jurisdiction in express terms over causes of action in civil cases arising beyond the border, if it had jurisdiction of the subject-matter and could acquire jurisdiction over the parties to the suit.

In terms, the Act of March 3, 1891, is very similar to the Organic Act of 1855. That Act gave to the Court of Claims jurisdiction to hear and determine "all claims founded upon any law of Congress * * * upon any contract, express or implied, with the Government of the United States. * * * Has the Court of Claims confined its jurisdiction to claims arising within our territorial limits? Has it not enforced claims arising in every quarter of the globe? For instance, the cases of Mosby and Hamilton.

This is a statutory remedy—a civil action to recover the value of property taken. It is a transitory action and follows the person. Any court of the United States may take cognizance of such action, where they have jurisdiction of the subject-matter and of the parties to the suit. Mitchell *vs.* Harmony 13 Howard, 115. This is a case of trespass *de bonis aspertatis*, and being a transitory action, it is only necessary to lay the place of trial under videlicet, 1 Howard, 241, McKenna *vs.* Kirk. In Dennick *vs.* Central Railroad—103 U. S. p. 441, the court says, "When the act is done for which the law says the person shall be liable, and the action by which the remedy is to be enforced is a personal and not a real action, and is of that character which the law recognizes as transitory and not local, we cannot see why the defendant may not be held liable in any court to whose jurisdiction he can be subjected by personal process, or by voluntary appearance, as was the case here." The court continues: "It is difficult to understand how the

nature of the remedy or the jurisdiction of the courts to enforce it is in any manner dependent on the question whether it is a statutory right or a common law right." It then adds, "Wherever, by either the common law or the statute law of a State, a right of action has become fixed, and a legal liability incurred, that liability may be enforced and the right of action pursued in any court which has jurisdiction of such matters and can obtain jurisdiction of the parties."

In McKenna *vs.* Fisk, 1 Howard, 117, the following points were recognized: In transitory actions, a venue is laid to show where the trial is to take place. It is a legal fiction, devised for the furtherance of justice, and cannot be traversed. In such actions, such a venue is good without stating where the trespass was, in fact, committed, with a scilicet of the county in which the action is brought. In the absence of statutory provision, the courts of the District of Columbia must apply the principles of the common law to such actions, the pleadings and the proofs.

The court in the same case illustrate the principle: If A becomes indebted to B, or commits a tort upon his person, or upon his personal property, in Paris, an action in either case, may be maintained against A in England, if he is there found, upon a declaration alleging a cause of action to have occurred in an English county, in which the action is laid, without taking notice of the foreign place." Lord Mansfield said: "As to transitory actions, there is not a color of doubt but that any action which is transitory may be laid in any county in England, though the matter arises beyond the seas."

The court continue: "It then appears from our books, that the courts in England have been open in cases of trespass other than trespass upon real property * * * for trespasses committed within the realm or out of the

realm, or within or without the King's foreign dominions." "And it also appears from the authorities which have been cited, that in a transitory action of trespass, it is only necessary to lay a venue for a place of trial, and that such venue is good without stating where the trespass was in fact committed, with a *scilicet* of the county, in which the action was brought."

In Mitchell *vs.* Harmony, 13 Howard, 80, the Supreme Court has anticipated this case. There an American citizen took by force from another American citizen in the same State (Chihuahua) of the Republic of Mexico, mules, horses, wagons, goods, &c., amounting to about $100,000. In this case, cattle, sheep, horses, mules, &c., of $75,000 in value were taken from the plaintiff by the defendants by force in the same State, in the Republic of Mexico, and in both cases suits have been brought in the Courts of the United States having jurisdiction of the parties and of the subject-matter, for the recovery of the value of the property taken.

The Supreme Court in Mitchell *vs.* Harmony sustained the jurisdiction. It says: "This was unquestionably a taking of the property by force from the possession and control of the plaintiff, and a trespass on the part of the defendant, unless he can show legal grounds of justification." The court continues: "*The trespass, it is true, was committed out of the limits of the United States.* But an action might have been maintained for it in the Circuit Court for any district in which the defendant might be found upon process against him, when the citizenship of the respective parties gave jurisdiction to a court of the United States." Judgment was given for the plaintiff, notwithstanding the property was taken in the Republic of Mexico, beyond the jurisdiction of the United States and Courts thereof. This seems conclusive.

In this case, if the court has jurisdiction of the subject-matter—which cannot be denied—and has before it all the parties to the suit—which must be admitted, it seems impossible, upon reason or authority, to sustain the defendant's plea.

The Court of Claims, p. 4 of the record, declare "that the statutes of a country do not run beyond its territorial jurisdiction." True, properly understood. Against the opinion of the learned court, I will not venture to oppose mine, but rather that of Alexander Hamilton, expressed in the 82d number of the Federalist. "The judiciary power of every government looks beyond its local or municipal laws and in *civil cases* lays hold of all subjects of litigation *between parties within its jurisdiction*, though the causes of dispute are relative to the laws of the most distant part of the globe. Those of Japan not less than of New York, may furnish the objects of legal discussion to our courts."

We have seen that, in transitory actions, relief may be had where the court has jurisdiction of the subject-matter and of the parties to the suit, no matter where the trespass was committed. If my horse is taken from me in the city of Mexico by a resident of this city, I can sue him here and recover the value of the horse, or, if a note for $1,000 is given me in the City of Mexico by a citizen of the District, upon his return home I can sue the maker and recover the money, notwithstanding "our statutes do not run beyond our territorial jurisdiction." So, if my personal property be taken any where by American Indians, in amity with the United States, without fault or provocation on my part, I can recover the value thereof under the Act of 1891, which confers on the Court of Claims jurisdiction over "all claims for property taken or destroyed by Indians belonging to any

The question here is, not whether "the statutes of a country run beyond its territorial jurisdiction"; but, can civil obligations, arising beyond our territorial limits, be enforced in the courts of the United States, where they have jurisdiction of the subject-matter and of the parties to the suit? If an American, in England, take my personal property from my possession and control by force, without legal grounds of justification, upon his return home, can he plead to an action for damages, that "the statutes of a country do not run beyond its territorial jurisdiction"? Mitchell *vs.* Harmony, 13 Howard p. 80. Or, if an American buy goods in England can he, upon his return home, plead to an action, that "the matter complained of occurred beyond the jurisdiction of the United States, and courts thereof, and that this court has not jurisdiction to entertain this suit?"

Such obligations follow the person. Now then, if, under the Act of March 3, 1891, a suit is instituted to recover the value of property taken in Mexico, is there in this or any other Act of Congress anything that exempts the case from the operation of general legal principles? I find nothing.

band, tribe or nation, in amity with the United States, without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for."

To sustain its judgment, the court below declares, that the United States cannot control or discipline Indians within Mexican territory. This is true. But this suit is not instituted to enforce discipline or control the conduct of anyone. It is merely to enforce a civil obligation arising in the Republic of Mexico. England cannot control or discipline A, who commits a tort on the person or personal property of B in Paris; yet, we find from the case cited above, that B is afforded relief against A in England.

The court also refers us for relief to the Executive Department of the Government. But nations never pay for property stolen by individuals within their limits. They may punish the thief, but never assume the loss.

Who, then, should be responsible but the Indians who committed the trespass or the Government that has assumed the responsibility?

Other positions are taken by the court below: 1. That the Act of 1891 is purely remedial in its nature; 2. That it creates no rights, etc.; 3. That to find the wrongs which it hopes to remedy we must turn to the Act of 1834. 4. That every claim here pending under the remedial statute of 1891 must turn back to the statute of 1834 to establish a right of recovery; 5. That the Act of 1834 limits the claims for Indian depredations and fixes the place of loss as within the Indian Territory, or any State or Territory inhabited by citizens of the United States; 6. That the Act of 1891 must be interpreted by the Act of 1834; 7. In short, that the Court of Claims has jurisdiction over no Indian depredation claim not defined in the act of 1834.

The Act of 1891 enacts that *in addition* to the jurisdiction which now is or may hereafter be conferred upon the Court of Claims, said court shall have and possess jusisdiction and authority to inquire into and finally adjudicate in the manner provided in this act all claims of the following classes, namely: First, all claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe, or nation in amity with the United States without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for. This is the only clause that relates to our case. Here, then, is plenary jurisdiction well defined, in addition to jurisdiction previously conferred to inquire into and finally adjudicate *all* claims for property of citizens of the United States taken or destroyed by Indians, with five conditions annexed:

1. The property taken must be from citizens of the United States.

2. The Indians must be a band, tribe or nation.

3. They must be in amity with the United States.

4. The depredation must have been committed without just cause or provocation.

5. And unless the property is returned or paid for.

Here, then, is full jurisdiction, expressed in language that is plain and free from ambiguity, needing no reference to former statutes to elucidate its meaning. What connection is there between the Act of 1891 and the Act of 1834? The Act of 1891 is an "Act to provide for the adjudication and payment of claims arising from Indian depredations." The Act of 1834 is an "Act to regulate

trade and intercourse with the Indian tribes and to preserve peace on the frontier." It makes no provision for the adjudication and payment of any claims. It confers no jurisdiction whatever on the Court of Claims. The only definition in the act—that of "Indian Territory"—has been repealed and dropped from the statutes, Crowdog Petitioner, 109 U. S. By what arbitrary ruling are we required to turn back to the Act of 1834 to find out what relief we can obtain under the Act of 1891? For the meaning and the scope of the Act of 1891, we must turn to the act itself and not to an act passed sixty years ago for other purposes. Indeed, this learned court, in a case recently decided, February 20th, 1899, Yorke *vs.* U. S. and Apache Indians, 173 U. S., had occasion to say "The act of 1891 is not ambiguous. Its clearness does not need and may not be construced by analogies from other statutes, or from the practice under other statutes. The rule is elemental that language which is clear needs no construction. Under both of the clauses of the Act of 1891, the claims of which jurisdiction was given were strictly identified, &c." See Hamilton *vs.* Rathbone, decided December 15, 1899, by S. C. U. S.

The Act of 1891 having conferred jurisdiction over *all* claims for property taken by Indians &c., upon five conditions, why should we by judicial construction be reduced to *certain* claims set out in the Act of 1834? why identity so plainly the claims in the Act of 1891, to be adjudicated, if we were expected to turn back to the Act of 1834 to find them? Had the Act of 1834 never been passed, would there be no case for relief under the Act of 1891?

Perhaps, the Act of 1834 may not be found quite so restrictive as the court assumes. It may be, that Congress intended even in that act to make the remedy co-exten-

sive with the wrong. The act embraces Indian depredations committed in any state or territory—not of the Union—but "any State or Territory inhabited by citizens of the United States." This depredation was committed on our property in the State of Chihuahua, when we were inhabitants of that state and citizens of the United States. No matter what State or Territory were inhabitated by citizens of the United States, under this clause, they might hope for protection against the depredation of Indians under our control and jurisdiction.

The Act of 1834 deals with depredations committed in the Indian Territory and in any State or Territory inhabited by citizens of the United States. In the Act of 1891, these words are omitted, and all claimants who are citizens of the United States may recover the value of property so taken upon the conditions already enumerated.

We therefore respectfully submit that this suit to recover the value of property taken in Mexico, should have been sustained by the Court of Claims, and that there is nothing in the Act of 1891 so ambiguous as to make it necessary to turn back to the Act of 1834 to ascertain the claims within the jurisdiction of the court.

But, if it should be held, that the value of property thus taken in Mexico, cannot be recovered in the Court of Claims; and that no Indian depredation claim can be enforced under the Act of 1891, unless defined in the Act of 1834; yet, it does not follow, that the defendant's plea should be sustained and the petition dismissed. There is other matter enough, on the face of the petition, to sustain the jurisdiction of the court.

This property, though taken in Mexico, was thence carried or driven by the Indians into the United States. This fact is alleged in the petition and is recited in the

opinion of the court.

It is needless to repeat the rule of the common law, "That when property is stolen and carried by the thief from the place where it is taken through and into other places, that the larceny continues and accompanies the thing stolen from one State to another, as it does from one county to another county in the same State." 12 Vol. Am. & Eng. Ency. p. 796, State *vs.* Johnson, 2 Oreg., 115.

This larceny then continued and accompanied the stock, that was taken in Mexico and driven into New Mexico and Arizona. So that the depredation was committed, as well in the United States, as in the Republic of Mexico. The offense was complete in both countries; and this appears upon the face of the petition.

I therefore conclude, that the jurisdiction of the Court of Claims extends to all claims defined in the Act of 1891; that there are no territorial or other restrictions in the act, that leave these claims to be adjudicated otherwise than upon the principles of the common law; that the cause of action being transitory, and not against the peace, but affecting property, there can be no objection to impleading the defendants wherever they can be found and subjected to the jurisdiction of the court; that the language of the Act of 1891, being plain and free from ambiguity, its meaning and scope must be found in the act itself, and that it cannot be altered and should not be interpreted by an act passed in 1834, for other purposes: that the property, so taken in Mexico, was carried by the Indians into the United States; if the taking was wrong, the possession was wrong; and therefore the offense was complete, the depredation was committed, in both countries.

John Critchett